

ORIGINAL
cc-SOM

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 03 2006 *Ag*
at 3 o'clock and 40 min. M
SUE BEITIA, CLERK

Attorneys for Plaintiffs/Limitation Defendants
SHIROH FUKUOKA, Individually and
as Personal Representative of
THE ESTATE OF MITSUKO FUKUOKA, and
as Next Friend Of MIHO FUKUOKA, a Minor

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In the Matter	)	Civil No. CV03-00672SOM
	)	(Non-Vehicle Tort)
Of)	
)	
The Complaint of MORNING STAR)	
CRUISES, INC., a Hawaii)	
corporation.)	
)	
SHIROH FUKUOKA,	)	Civil No. 04-00588 SOM-BMK
	)	(Consolidated)
Plaintiff,)	
	)	LIMITATION DEFENDANTS' BRIEF
Vs.	)	TO THE COURT RE THE CASE
	)	REMAINING IN FEDERAL COURT;
MORNING STAR CRUISES, INC.,	)	CERTIFICATE OF SERVICE
)	
Defendant.	)	Date: August 21, 2006
	)	Time: 11Z;15 a.m.
	)	Judge: Susan Oki Mollway
)	
)	

**LIMITATION DEFENDANTS' BRIEF TO THE COURT RE
THE CASE REMAINING IN FEDERAL COURT**

SCANNED

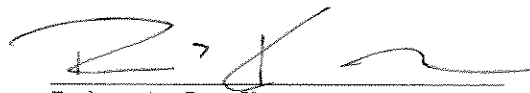
I. Introduction

In light of the Ninth Circuit's recent decision in Lively v. Wild Oats Markets, Inc., No. 04-056682, wherein the court held that "the forum defendant rule is procedural, and therefore a violation of this rule is a waivable defect in the removal process that cannot form the basis for a district court's sua sponte remand order.", Limitation Plaintiffs concede that this Court may maintain jurisdiction over these consolidated cases.

II. Conclusion

Based on the foregoing, Limitation Defendants respectfully concede that the Honorable court may retain jurisdiction over these consolidated cases.

Dated: Honolulu, Hawaii, August 3, 2006.


Robert D. Kawamura

Attorney for Limitation
Defendants
SHIROH FUKUOKA, Individually
and as Personal Representative
of THE ESTATE OF MITSUKO
FUKUOKA, and as Next Friend Of
MIHO FUKUOKA, a Minor

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Plaintiff,)	
)	CERTIFICATE OF SERVICE
Vs.)	
)	
MORNING STAR CRUISES, INC.,)	
)	
Defendant.)	
)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT on the date
below a copy of the foregoing was duly served upon the following
party by way of hand delivery at the following address;

Gregory K. Markham, Esq.
Keith K. Kato, Esq.
Desiree Hikida Mokuohai, Esq.
CHEE & MARKHAM
1000 American Savings Bank Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Attorneys for Limitation Plaintiff
MORNING STAR CRUISES, INC.

Dated: Honolulu, Hawaii, August 3, 2006.


Robert D. Kawamura

Attorney for Plaintiffs/
Limitation Defendants
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